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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,443	12/15/2003	Yee Yang	KCC 4972.2 (17,515C)	3431
321	7590	02/21/2007		
SENNIGER POWERS ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			EXAMINER HAND, MELANIE JO	
			ART UNIT	PAPER NUMBER
			3761	
SHORTENED STATUTORY PERIOD OF RESPONSE		NOTIFICATION DATE	DELIVERY MODE	
3 MONTHS		02/21/2007	ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 02/21/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspatents@senniger.com

Office Action Summary

Application No.

10/736,443

Applicant(s)

YANG ET AL.

Examiner

Melanie J. Hand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/8/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 30, 2006 has been entered.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on February 8, 2007 was filed after the mailing date of the final Office action on September 1, 2006. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Response to Arguments

Applicant's arguments with respect to claims 1-36 have been considered but are moot in view of the new ground(s) of rejection.

With respect to applicant's arguments regarding the prior art of Rosch: Applicant argues that Rosch does not teach an embodiment in which the side edges of garment 110 are attached to each other from the waist opening to less than 50% of the length of the side seam with the remaining length defining an area in which the side edges are free from attachment to each other. Rosch teaches both non-refastenable and refastenable seams 27/127,29/129 for garment 110, thus Rosch is teaching they are suitable equivalents of one another. Examiner cites the

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following from the specification: As an example, the fastening components 52, 54 suitably extend from the front and back waist ends 56, 58 of the garment shell 22 along the side margins 48, 50 thereof in the range of about 25 percent to about 50 percent of the length of the side margins (broadly, about 25 percent to about 50 percent of the length of the side seams 19 of the absorbent garment 10). However, it is understood that the fastening components 52, 54 may be longer or shorter without departing from the scope of this invention. Thus, in the illustrated embodiment, only a portion of the side seams 19 of the absorbent garment are refastenable. (Specification, ¶0051)

Since applicant does not establish criticality for a range of less than 50% for the attached portion of the seams, and Rosch teaches that both refastenable and nonrefastenable seams are suitable, it would be obvious to one of ordinary skill in the art to modify the device of Rosch to arrive at various combinations of refastenable and non-refastenable lengths for the seams. Examiner is interpreting the term non-refastenable to also encompass embodiments in which the side edges are not attached to one another, as they are non-refastenable in that physical state.

Double Patenting

The nonstatutory double patenting rejection of claims 1-10 and 12-20 is maintained herein.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosch et al (U.S. Patent No. 6,115,847) in view of Christoffel et al (U.S. Patent Application Publication No. 2002/0087137).

With respect to **Claims 1-3,7,8,10,19,20,27,30,35,36**: Rosch teaches an active wear trunk garment 110 having a liquid-permeable trunk cover 114 having inner surface 111 and outer surface 113 and a waste containment structure 142 comprising a liquid-impermeable backsheet 158 having a garment-facing surface, a liquid-permeable bodyside liner 156 and absorbent core 160 sandwiched therebetween. ('847, Col. 8, lines 8-16) Trunk cover 114 has front waist, rear waist and crotch regions 131,133,149 as can be seen in Figs. 1-4. As can also be seen in Figs. 1-4, waste containment structure 142 is disposed generally within trunk garment 110. Rosch teaches that trunk cover 114 is joined to elastic members 143,145 at the waist regions ('847, Col. 10, lines 45-49), therefore Rosch does not teach that trunk cover 114 is releasably attached at the front and rear waist regions. Waste containment structure 142 has laterally spaced side panels 126,128 separated into definable front and back side panels by manual seams near seams 127 and 129, said front side panels extending outward from the front waist region and laterally opposite said back side panels extending outward from the back waist region, the said front side panels of the absorbent assembly 142 being attached to the garment shell 114 generally at the side margins of the front panel assembly to together define back side margins of the absorbent garment. The said back side panels of the absorbent assembly 142 are attached generally at the back side margins of the back panel assembly to together define back side margins of the garment 110 being releasably and refastenably attached to each other to removably secure the garment 110 on the wearer's waist. (Col. 4, lines 38-40)

Christoffel teaches a girl's swimsuit wherein an absorbent pant/bottom portion 98 is releasably attached to the upper portion/bodice 42 at the front and rear waist areas via hook and loop fasteners 92 to secure the pant portion and upper portion about the waist of the wearer and for greater ease in applying and removing said swimsuit, ('137, ¶¶ 0071-0074) therefore it would be obvious to one of ordinary skill in the art to utilize hook and loop fasteners to releasably attach the outer cover 114 and garment 110 taught by Rosch so as to more easily apply and remove garment 110 as taught by Christoffel.

With respect to **Claim 4,28**: Rosch teaches pant structure 112 having left and right side panels 126, 128 respectively that extend from the front waist region 120 to the rear waist region 122. ('847, Col. 12, lines 4-12) Panels 126,128 are ultrasonically bonded and have non-refastenable seams so as to allow fastening of a front side panel to a corresponding back side panel, thus defining leg openings, as can be seen in Figs. 5,6. ('847, Col. 12, lines 18-21) As can also be seen in Figs. 5 and 6 pant structure 112 has front and back panel areas in addition to the side panels.

With respect to **Claim 5**: Rosch teaches leg openings defined by seams 187,189 in cover 114. ('847, Col. 11, lines 1-5) As can best be seen in Fig. 4, garment 110 has leg openings spaced apart inwardly from leg openings defined by cover 114.

With respect to **Claim 6,29**: Rosch teaches leg elastics 136,138 for pant structure 112. ('847, Col. 12, lines 25,26) Cover 114 is in the form of swimming trunks and as can best be seen in Fig.4 is designed to hang loosely about the legs of the wearer.

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With respect to **Claims 9,14**: As can best be seen in Fig. 4, the crotch region of garment 110 is located inwardly of the crotch region 149 of cover 114 and not attached. Further, Rosch teaches cover 114 is configured as a pair of swimming trunks, wherein said trunks, as stated previously are intended to hang loosely about the legs of the wearer, whereas the garment contains leg elastics to fully encircle the legs of the wearer.

With respect to **Claim 12**: As can best be seen in Fig. 4, Rosch teaches that garment 110 has a waist opening defined by waist regions 131 and 133 corresponding to the waist regions of cover 114.

With respect to **Claims 13,34**: Rosch teaches pant structure 112. ('847, Col. 12, line 5)

With respect to **Claim 15**: The absorbent garment 110 has a waist opening, at least one outer leg opening, and laterally opposite side seams 27,29 extending generally from the waist opening to said at least one outer leg opening, the absorbent garment being releasable and refastenable via attachment to the absorbent assembly 142 which has refastenable releasable seams and via a lack of attachment of the portions of a cover along at least a portion of each of said side seams.

With respect to **claim 16**: The absorbent garment 110 taught by Rosch is releasable and refastenable along the entire length of each of said side seams, via attachment to the absorbent assembly 142 which has seams which are refastenable and releasable through their entire length and via a lack of attachment of the portions of a cover along at least a portion of each of said side seams. (Col. 4, lines 62-65)

With respect to **Claims 17,18,22,23,25**: Since Rosch teaches that the side panels are elastomeric and are capable of stretching to between 10-500% of their original length ('847, Col. 8, lines 55-60), Examiner is asserting that they are capable of creating an overlap in the range set forth by applicant in claim 23 (thus also falling within the range set forth in claim 22), in both the cases of non-refastenable and refastenable seams.

With respect to **Claims 21-24,26,31-33**: Please see the rejections of Claims 1 and 17 in addition to the following: Since Rosch teaches both non-refastenable and refastenable side seams ('847, Col. 11, lines 1-5, 14,15), though Rosch does not teach using them in combination, it would be obvious to one of ordinary skill in the art to modify said side seams so as to contain both refastenable and non-refastenable portions, for example having a non-refastenable portion located above fasteners 96 on each side seam, including a configuration in which the refastenable portion of each side seam comprises 25-50% of the length of the seam.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Melanie J Hand
Examiner
Art Unit 3761

February 12, 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

